

Remarks

Status of Claims

Claims 47-80 are pending, of which claims 47, 61, 66, 76, and 80 are independent.

Claim Rejections – 35 USC § 103

The examiner has rejected claims 1-80¹ as obvious over Swait, J *et al.*, “Enriching Scanner Panel Models with Choice Experiments,” Marketing Science, vol. 22 issue 4 (“*Swait*”) in view of Qian, J *et al.*, “Optimally Weighted Means in Stratified Sampling,” available at http://www.amstat.org/sections/srms/proceedings/papers/1994_149 (“*Qian*”).

The applicants respectfully traverse this rejection, on the basis that *Swait* is not prior art to the present application, as discussed in more detail below. However, each rejection in the previous office action relies on *Swait*’s putative disclosure of certain claim features.

A. *Swait* was not Published More Than One Year Before the Critical Date

The pending application was filed on February 20, 2004. Nominally, the *Swait* reference appeared in the “Fall 2003” issue of the journal Marketing Science. This journal is published by The Institute for Operations Research and the Management Sciences (“INFORMS”). The Fall 2003 issue of Marketing Science was shipped by INFORMS on December 20, 2003, as demonstrated in the attached INFORMS shipping schedule. Thus, the *Swait* reference could not have been publicly available until some time after December 20, 2003. This date is well after critical date of February 20, 2003.

B. *Swait* was not Published Before the Invention Date

The attached declaration under 37 C.F.R. §1.131 establishes an invention of July 14, 2003 or earlier.

¹ Office Action of 5/08/09, p. 7. Applicants note that only claims 47-80 were pending when this Office Action was issued.

Conclusion

In view of the foregoing, the applicant believes that the currently pending claims are in condition for allowance and respectfully requests a corresponding Notice of Allowance.

The applicant believes that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Nothing in this paper should be construed as intent to concede any issue with regard to any claim, except as specifically stated in this paper.

The Director is hereby authorized to charge any fees or to credit any overpayments associated with this filing to Deposit Account No. 50-4262.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (781) 453-9993.

Respectfully submitted
STRATEGIC PATENTS, P.C.

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